

**SECOND AMENDMENT TO
AMENDED AND RESTATED EMPLOYMENT AGREEMENT
BETWEEN CITY OF MORGAN HILL
AND
J. EDWARD TEWES**

This Second Amendment ("Amendment") to the Amended and Restated Employment Agreement between the City of Morgan Hill (the "City") and J. Edward Tewes ("Tewes") dated as of July 19, 2006, as amended (the "Restated Agreement"), is entered into as of July 1, 2010.

Recitals

- A. Tewes has been employed as City Manager of Morgan Hill since January 6, 2000. Tewes also serves as the Executive Director of the Morgan Hill Redevelopment Agency.
- B. Due to severe budget constraints, the City Council has adopted a Fiscal Year 2010-2011 budget that has resulted in staff reductions and no compensation increases for management and represented employees of the city during the Fiscal Year.
- C. Pursuant to the Restated Agreement, City has agreed to increase Tewes' base salary each July 1 by the percentage increase in the San Francisco-Oakland/San Jose Urban wage Earner Index ("Consumer Price Index"). There was no such salary increase for the fiscal year beginning July 1, 2009. There is an expected increase in the Consumer Price Index for the fiscal year beginning July 1, 2010.
- D. In consideration for Tewes' continued employment, the City and Tewes have agreed to this Amendment to forego the Consumer Price Index increase to Tewes' base salary effective July 1, 2010.

Agreement

In consideration of the promises and for good and valuable consideration set forth below and in the Recitals, the parties agree as follows:

- 1. Section 7.3 of the Restated Agreement shall be amended by adding the following to the end of Section 7.3:
"However, Tewes shall not receive such an annual cost-of-living adjustment for only the one year period starting July 1, 2010."
- 2. Except as modified by this Amendment by adding the sentence set forth in Paragraph 1, the Restated Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to be effective as of July 1, 2010.

Date: 7/8/2010

CITY OF MORGAN HILL

By: [Signature]
Steve Tate, Mayor

Date: 7/8/10

By: [Signature]
J. Edward Tewes

Attest: [Signature]
City Clerk

Date: 8/4/10

APPROVED AS TO FORM

[Signature]
Danny Wan, City Attorney

Date: 8/12/10

Approval 7/21/10

6/30/08

**FIRST AMENDMENT TO
AMENDED AND RESTATED
EMPLOYMENT AGREEMENT
BETWEEN
CITY OF MORGAN HILL
AND
J. EDWARD TEWES**

This First Amendment ("Amendment") to the Amended and Restated Employment Agreement between the City of Morgan Hill (the "City") and J. Edward Tewes ("Tewes") dated as of July 19, 2006 (the "Restated Agreement") is entered into as of this 26th day of September, 2007.

Recitals

- A. Tewes has been employed as City Manager of Morgan Hill since January 6, 2000, serving the first six months as Interim City Manager. Tewes also serves as Executive Director of the Morgan Hill Redevelopment Agency. During the course of Tewes' employment with the City, the initial employment contract setting forth the terms of Tewes' employment has been modified a number of times. On July 19, 2006, the City and Tewes entered into the Restated Agreement.
- B. The parties now desire to amend certain provisions of the Restated Agreement, which is attached as Exhibit A to this Amendment, to reward Tewes for his performance and to provide incentive for him to remain in the position of City Manager.

Agreement

In consideration of the premises and for good and valuable consideration set forth below which is hereby acknowledged as adequate, the parties agree as follows.

- 1. Section 7.1 of the Restated Agreement shall be amended to read in its entirety as follows:

"Effective July 1, 2007, CITY agrees to pay TEWES for his services rendered pursuant hereto, an annual salary of One Hundred Seventy-Six Thousand and Five Hundred Dollars (\$176,500.00) ("Base Salary") payable at the same time and in the same manner as other employees of the CITY are paid. The Base Salary includes the cost of living increase effective July 1, 2007 to which TEWES is entitled pursuant to Section 7.3. The City Council, in its sole discretion, and at a duly noticed public meeting, may grant additional merit increases to TEWES during the term of this Agreement."

2. The third sentence of Section 8.1.2 shall be amended to read as follows:
"Through September 28, 2012, the principal amount of the loan bears interest at four percent (4%) per annum; after September 28, 2012, the interest rate shall increase to five and six-tenths percent (5.6%) per annum until the loan is paid in full."
3. The first sentence of Section 8.1.3 shall be amended to read as follows:

"In consideration of TEWES' past performance and as an added incentive to retain his continuing service to the CITY, the City Council agreed to reduce the principal balance of the Promissory Note described in Section 8.1.2 by Five Thousand Dollars (\$5,000.00) (the "Reduction") if Tewes was still employed by the CITY as City Manager and Agency Executive Director as of July 1, 2007. As of the date of this Amendment, that condition has been satisfied. To clarify the intent and implementation of that Reduction, the parties hereby acknowledge and agree that the Reduction shall be effective only upon the full repayment of the obligation evidenced by the Promissory Note and no earlier."
4. Except as modified by this Amendment, the Restated Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to be effective as of July 1, 2007.

CITY OF MORGAN HILL

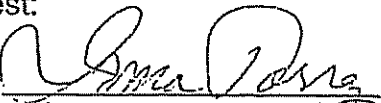
Date: 10-1-07

By: 
Steve Tate, Mayor

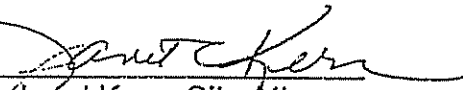
Date: 10-1-07

By: 
J/ Edward Tewes

Attest:

By: 
Irma Torrez, City Clerk

Approved as to Form:

By: 
Janet Kern, City Attorney

AMENDED AND RESTATED

EMPLOYMENT AGREEMENT BETWEEN CITY OF MORGAN HILL AND J. EDWARD TEWES

This Amended and Restated Employment Agreement ("Agreement") is entered into this 19th day of July, 2006, by the City of Morgan Hill, a municipal corporation ("City") and J. Edward Tewes, an individual ("Tewes").

RECITALS

- A. The City first entered into an employment agreement with Tewes on January 6, 2000, naming Tewes Interim City Manager. On July 7, 2000, the parties entered into a new agreement naming Tewes as the City Manager. Subsequently, on September 5, 2001, the City Council approved another agreement continuing Tewes services as City Manager. Subsequently, the parties entered into a new employment agreement with Tewes dated September 27, 2002, which was subsequently amended on April 17, 2003, and May 5, 2004.
- B. The parties now desire to further amend the employment agreement and to restate its terms in full in this Amended and Restated Employment Agreement.
- C. At a duly noticed public meeting, the City Council approved this Agreement on July 19, 2006.

AGREEMENT

- 1. **Parties:** The parties to this Agreement are the CITY OF MORGAN HILL ("CITY") and J. EDWARD TEWES ("TEWES").
- 2. **Purpose:** The purpose of this Agreement is to provide for the employment of TEWES as City Manager of CITY, as currently provided by Title 2, Chapter 2.08 of the Municipal Code of the City of Morgan Hill.
- 3. **Duties:** CITY hereby agrees to employ TEWES to perform the functions and duties of City Manager for the CITY and Executive Director of the Redevelopment Agency ("RDA") as specified in the Municipal Code of the City of Morgan Hill, the Job Description, and any other applicable Ordinances, Resolutions or Policies, and to perform such other legally permissible and proper duties and functions as the CITY shall from time-to-time assign. TEWES agrees that, to the best of his ability and experience, he will at all times loyally and conscientiously perform all of the duties and obligations required of him either expressly or implicitly by the terms of this Agreement.

4. Term of Agreement:

- 4.1 TEWES agrees to remain in the exclusive employ of the CITY until June 30, 2008, and neither to accept other employment nor become employed by another employer until such termination date, unless such termination date is modified as provided hereafter.
- 4.2 The term "exclusive employ of the CITY" shall not be construed to preclude occasional teaching, writing, or military service performed by TEWES as long as it does not conflict with his primary responsibilities as City Manager and Executive Director described in this Agreement. Also, CITY and TEWES recognize the value of participation in the City Manager's Department and other League of California Cities' activities, and in the California Redevelopment Association, and that speaking requests and teaching are valuable resources to the CITY. CITY may permit consulting services to other entities upon prior approval of the City Council.
- 4.3 On July 1st of each year of this Agreement (commencing July 1, 2007), the termination date of this Agreement (set forth in Section 4.1 above) shall be automatically extended for an additional one-year period unless by the preceding April 1st the CITY provides written notice to TEWES of its determination to not extend the term. In the event of such written notice, the termination date of this Agreement shall be on June 30th of the following calendar year, fifteen (15) months subsequent to the notice.

5. Separation from Employment:

- 5.1 The City Council may, subject to provisions set out below, terminate the services of TEWES at any time, it being expressly understood and agreed between the parties that TEWES serves as an at-will employee of the City Council. CITY must provide TEWES with thirty (30) days written notice prior to separation from employment. CITY may not give notice of separation from employment to TEWES until sixty (60) days after a Mayoral or Council Member election. The intent of this time period is to allow the new City Council to have adequate time to review the City Manager's performance.
- 5.2 In the event of TEWES separation from employment in accordance with Section 5.1, while TEWES is still willing and able to perform the duties of City Manager, TEWES shall be entitled to receive compensation, consisting of a lump-sum payment of twelve (12) months of base salary and benefits ("Severance Payment").

The Severance Payment shall include all benefits payable to or on behalf of TEWES with the exception of vacation not yet accrued as of the date of

separation. Both salary and benefits shall be computed as of the rates in effect as of the date of separation from employment.

The Severance Payment will release CITY from any further obligations under this Agreement, and any claims of any nature that TEWES might have against the CITY by virtue of his employment or termination thereof. Contemporaneously with the delivery of the Severance Payment and in consideration therefore, TEWES agrees to execute and deliver to CITY a release releasing CITY of all claims that TEWES may have against CITY. In return for such Severance Payment, TEWES agrees to be available for consultation and assistance to the incoming acting, interim or permanent City Manager.

TEWES shall not be entitled to the Severance Payment in the following events:

5.2.1 CITY elects not to renew this Agreement pursuant to Section 4.3; or

5.2.2 TEWES is terminated because of his conviction of a felony or misdemeanor involving moral turpitude, or is convicted of any illegal act involving personal gain to himself.

5.3 TEWES may resign at any time from his position with the CITY provided that he gives the CITY sixty (60) days' advance written notice. Should TEWES not provide the CITY with sixty (60) days' written notice, he shall not be entitled to cashout of any benefit other than as required by law.

6. **Disability:** If TEWES is permanently disabled or is otherwise unable to perform the full range of the essential functions of his position because of sickness, accident, injury, mental incapacity or other health reasons for a period of four (4) successive weeks beyond exhaustion of all accrued sick leave, the CITY shall have the option to terminate this Agreement pursuant to Section 5.1.

7. **Compensation:**

7.1 Effective January 1, 2006, CITY agrees to pay TEWES for his services rendered pursuant hereto an annual salary of One Hundred Fifty-Nine Thousand Three Hundred Dollars (\$159,300.00) ("Base Salary") payable at the same time and in the same manner as other employees of the CITY are paid. The City Council, in its sole discretion and at a duly noticed public meeting, may grant additional merit increases to TEWES during the term of this Agreement.

7.2 CITY agrees to provide TEWES a Five Hundred Dollar (\$500.00) per month car allowance.

- 7.3 Except as otherwise provided in this Agreement, TEWES shall receive an annual cost-of-living adjustment in his Base Salary, beginning July 1, 2006, equal to the percentage increase in the San Francisco-Oakland/San Jose Urban Wage Earner Index, Base rate index for the one year period ending on June 30th of each year of this Agreement.
- 7.4 TEWES shall be entitled to the same benefits provided to CITY employees in the range of the "A" group of the City's Management salary resolution.
- 7.5 In order to encourage and facilitate TEWES working at home on CITY administrative and redevelopment work during evenings and weekends, CITY will reimburse TEWES for computer equipment, including both hardware and software. The reimbursement shall not exceed \$2,000 every two fiscal years commencing July 1, 2006.
- 7.6 During the term of this Agreement, CITY shall pay on behalf of TEWES the maximum amount allowed under federal tax law into the CITY's deferred compensation plans. TEWES may apportion the CITY's contribution between the CITY's plans as he desires. Payments shall be made on the same schedule as salary payments.

8. **Relocation and Housing Assistance:**

8.1 **Housing Assistance:**

8.1.1 **Housing Allowance.** CITY shall pay to TEWES Seven Hundred and Fifty Dollars (\$750.00) per month as a housing allowance.

8.1.2 **Loan to TEWES.** CITY loaned TEWES Four Hundred Seventy Five Thousand Dollars (\$475,000.00) to enable TEWES to purchase a residence and property ("Property") in Morgan Hill. Said loan is evidenced by a Promissory Note made by TEWES payable to the CITY and secured by a First Deed of Trust on the Property. Through September 28, 2007, the principal amount of the loan bears interest at four percent (4%) per annum; after September 28, 2007, the interest rate shall increase to five and six-tenths percent (5.6%) per annum until the loan is paid in full. Principal and interest are amortized over a thirty (30) year period payable in equal bi-weekly installments through an automatic payroll deduction with the entire balance due and payable on September 28, 2030. The loan may be pre-paid at any time without penalty. TEWES shall be required to pay the entire balance owing on the Promissory Note within twelve (12) months following any separation from employment pursuant to this Agreement. TEWES shall not cause, suffer or permit any encumbrance against this Property.

8.1.3 Longevity Benefit. In consideration of TEWES' past performance and as an added incentive to retain his continuing service to the CITY, the City Council agrees to reduce the principal balance of the Promissory Note described in Section 8.1.2 by Five Thousand Dollars (\$5,000.00) if TEWES is still employed by the CITY as City Manager and Agency Executive Director as of July 1, 2007. Additionally, at any time after July 1, 2007, TEWES may utilize up to one hundred (100) hours of his accrued Administrative Leave (described in Section 10 below) to reduce the outstanding principal balance of the Promissory Note. If TEWES elects to so utilize his Administrative Leave, the loan will be reduced by an amount calculated as follows: the number of hours being eliminated from TEWES' Administrative Leave account balance shall be multiplied by TEWES' then current hourly rate of pay. The then current hourly rate of pay shall be determined by dividing TEWES' then current Base Salary (set forth in Section 7.1 as modified by Section 7.3) by 2,080 hours (40 hours times 52 weeks). TEWES shall only be entitled to make the election to exchange up to 100 hours of Administrative Leave in this manner once. If TEWES makes the election described in this Section utilizing less than 100 hours of Administrative Leave, the remaining balance shall be available for his continued use as administrative leave.

8.2 Mortgage, Taxes, Insurance, Homeowner Fee. During the term of this Agreement, TEWES shall pay in a timely manner the obligation secured by the First Deed of Trust described above. Unless the Homeowners Association of the Property, if any, maintains fire and hazard insurance on the Property, TEWES shall obtain and keep in force policies of fire and hazard insurance with limits of not less than the replacement value of the Property naming both CITY and TEWES as insured parties. All taxes assessed against the Property and the cost of maintaining the policies of fire and hazard insurance shall be paid in a timely basis by TEWES. In addition, TEWES shall obtain and maintain earthquake insurance on the Property. The parties agree that TEWES shall claim the deductions for property taxes and interest for state and federal income tax purposes to the extent paid by him and that CITY shall not claim any of said expenses for tax purposes.

8.3 Maintenance and Improvements. TEWES shall maintain the Property, at his sole expense, in good and habitable condition, reasonable wear and tear excepted. TEWES may make such improvements to the home as he deems beneficial.

9. Performance Evaluation:

9.1 The City Council shall review and evaluate the performance of TEWES at least annually and shall meet with TEWES to discuss the evaluation on or before July 2 of each year. Said review and evaluation shall be in

accordance with a process developed jointly by CITY and TEWES, which may be modified by mutual agreement. This evaluation shall be private and confidential, and the results shall be summarized and discussed in closed session, to the extent permitted by law, or through some other mutually acceptable format. The parties agree that the primary purpose of the evaluation is to facilitate open and frank discussion, define roles and expectations, identify performance strengths and weaknesses, and to provide an opportunity for TEWES to take affirmative action to address weaknesses and areas needing improvement. TEWES shall be provided with a summary written statement of the findings of the City Council, and he shall be provided an opportunity to discuss his evaluation with the City Council.

- 9.2 Annually, the City Council, in consultation with TEWES, shall define goals and performance objectives for the City Manager which they determine to be necessary for the proper operation of the City.

10. **Hours of Work, Administrative Leave:** It is recognized that TEWES must devote a great deal of time outside of normal working hours to the business of the CITY, and to that end, TEWES is granted annual Administrative Leave, which may be taken at his discretion. This amount is given in lieu of, and not in addition to, any amount of administrative time granted to other managers in the City. Effective July 1, 2006, TEWES is granted one hundred twenty (120) hours for the 2006-2007 fiscal year. Thereafter, on each July 1, the annual Administrative Leave shall be increased by eight (8) hours per year. The Administrative Leave may be further increased by the City Council at any time at their discretion at a publicly noticed meeting. The Administrative Leave balance may be accrued from year to year. This amount may be cashed out, at TEWES' option, in accordance with the regulations governing the managers' administrative leave program.

11. **Sick Leave, Holidays, Vacation, Leave Without Pay and Bereavement Leave, Sick Leave Buy Out:** TEWES shall be entitled to accrue, and to have credited to his personal account, vacation and sick leave as provided to department directors. TEWES shall be entitled to holiday, leave without pay, bereavement leave and sick leave buy-out the same as other management employees of the CITY. TEWES shall be entitled to unlimited accrual of vacation time to the extent such benefit is offered to other management employees. Calculation of sick leave and vacation accrual shall begin as if TEWES was employed by the CITY effective January 1, 2000.

12. **Disability, Health, Life Insurance and Medicare:**

- 12.1 The CITY agrees to put in force and make 100 percent of the required premium payments for TEWES for insurance policies of disability income benefits, life, and accident.

12.1.1 Said disability income plan shall have a ninety (90) day waiting period and shall provide a minimum of two-thirds (2/3) salary following such waiting period.

12.1.2 Said life insurance shall be double indemnity term policy in a minimum amount of \$125,000.

12.2 The CITY agrees to pay medical, dental, and vision insurance benefits to TEWES and his dependents as he may determine in the same amount as provided for the "A" group on the CITY's then current Management salary resolution. In addition, the CITY shall pay an additional One Hundred Dollars (\$100.00) per month to TEWES to offset medical expenses. In the event the deferred compensation described in Section 7.6 and that from medical described in this Section exceeds the Federal deferred compensation maximum, TEWES shall have the compensation paid in a taxable form.

13. **Retirement:** CITY agrees to pay the full personal retirement contribution of both TEWES and CITY.

14. **Professional Development:** The CITY hereby agrees to budget for and to pay membership fees/dues, conference/meeting registrations, and the travel and subsistence expenses of TEWES for professional development and official travel, meetings and occasions adequate to continue the professional development of the City Manager and to adequately pursue necessary official and other functions of the CITY, including, but not limited to, the Annual Conference of the League of California Cities, the Spring City Managers' Conference, the Annual Conference of the California Redevelopment Association, and ICMA. Travel and conference expenses shall be reimbursed for reasonable expenses only, and in accordance with the City's standard policies governing travel and conference expense reimbursement.

The CITY agrees to reimburse TEWES for tuition, fees, books, software, and related educational expenses for professional development.

15. **Non-Liability of Officials and Employees:** No official or employee of the CITY shall be personally liable for any default or liability under this Agreement.

16. **Bonding:** CITY shall bear the full cost of any fidelity or other bonds required of TEWES under any law or ordinance.

17. **Other Terms and Conditions of Employment:**

17.1 The City Council, in conjunction with TEWES, shall fix any other terms and conditions of employment, as it may determine from time to time, relating to the performance of TEWES, provided such terms and conditions are not

inconsistent with or conflict with the provisions of this Agreement or other applicable law.

- 17.2 All provisions of the CITY's Municipal Code, and regulations and rules of the CITY relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended, also shall apply to the City Manager as they do other employees of the CITY in addition to said benefits enumerated specifically for the benefit of TEWES except as herein provided.
- 17.3 At any time after January 1, 2007, TEWES may submit a proposal for City Council consideration for an extended paid leave of absence ("Sabbatical"). It is expected that the Sabbatical proposal would define the scope and conditions, including the benefits, of the activity to the City as well as a proposal for coverage of City Manager/Executive Director functions during TEWES requested absence. Granting of a proposed Sabbatical is at the City Council's sole discretion.
18. **No Reduction in Benefits:** The City shall not at any time during the term of this Agreement reduce the salary, compensation or financial benefits to TEWES.
19. **Notice:** Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid. Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial proceedings. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service to the addresses set forth below or as subsequently communicated by one party to the other in writing.
- 19.1 Notice to TEWES shall be sent to: 540 Via Sorrento
Morgan Hill CA 95037
- 19.2 Notice to CITY shall be sent to: Mayor
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037
20. **General Provisions:**
- 20.1 The text herein shall constitute the entire agreement between the parties.
- 20.2 The Agreement shall be binding and inure to the benefit of the heirs at law and executors of TEWES.

20.3 This Amended and Restated Agreement is effective as of the date set forth in the first paragraph. This Agreement supersedes any other contract or agreement between the CITY and TEWES.

20.4 If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be effective, and shall remain in full force and effect.

20.5 The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

20.6 This Agreement constitutes the entire agreement between the parties and supersedes any previous Agreements, oral or written. This Agreement may be modified or provisions waived only by subsequent mutual written agreement executed by CITY and TEWES.

20.7 This Agreement shall be interpreted under the laws of the State of California. This Agreement shall be interpreted as though prepared by both parties.

CITY OF MORGAN HILL

Date: 7/21/06

By: [Signature]
Mayor

Date: 7-20-06

By: [Signature]
J/Edward Tewes

ATTEST:

By: [Signature]
City Clerk
Date: 7/21/06

APPROVED AS TO FORM:

By: [Signature]
City Attorney
Date: 7-20-06